

2025:PHHC:010475



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-23545-2021 (O&M)
Date of Decision: 21.01.2025**

SUBHASH

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Mohit Rathee, Advocate
for the petitioner.

Mr. P.C. Goyal, Addl. A.G., Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

CM-7251-CWP-2023

Allowed as prayed for.

The replication alongwith Annexures A-1 and A-2 are ordered to be taken on record subject to all just exceptions. Registry is directed to tag the same at appropriate place of the paper book.

MAIN CASE

Seeking regularization of service w.e.f. the date when the juniors of the petitioner had been given such benefits, the petitioner has approached this Court.

Learned counsel for the petitioner contends that the petitioner was appointed on 01.06.1991 as Beldar by the respondent-Department on daily wages and he rendered unblemished services to the complete satisfaction of

respondent-Department. However, all of a sudden, his services were terminated by the respondent-Department on 01.12.2002 without assigning any reasons. He contends that before passing of the said order of termination, the State Government had already notified a regularization policy dated 07.03.1996 for work-charged/casual/daily rated employees, as modified on 18.03.1996, thereby deciding to regularize the services of all those work-charged/casual/daily rated employees, who had completed three years' service as on 31.03.1996 and subject to fulfilling other conditions specified therein. Even though the claim of the petitioner was covered under the said Policy of 1996, however, the benefit was not extended to him and his services were later terminated.

The petitioner served a demand notice under Section 2-A of the Industrial Disputes Act, 1947 dated 12.07.2004 against the illegal termination of his services and on failure of conciliation, he filed a reference petition before the Industrial Tribunal-cum-Labour Court, Rohtak.

The reference was allowed in favour of the petitioner and his services were directed to be reinstated on the same post with continuity of service and 50% back wages from the date of the demand notice i.e. 12.07.2004, vide Award dated 09.12.2011. The said Award was challenged by the respondent-Department before the High Court in CWP No.13151 of 2012 but the same was dismissed vide order dated 20.07.2015 finding no merit. The said Award has thus become final.

He contends that the petitioner thereafter served another legal notice dated 03.03.2018 upon the respondent-Department for regularization of his services w.e.f. from the date when his juniors namely Nanku Ram s/o Shri Mirai Pal; Bhim Singh; Satbir son of Bharat Singh; Bijender and Rattan etc.

were regularized. The respondent-Department sent reply to the above legal notice on 01.05.2018 whereby the claim of the petitioner for regularization of services of the petitioner was rejected. A counter reply was also sent by the petitioner on 14.06.2018 clarifying the entire position and placing reliance upon the Regularization Policy of 1996 dated 18.03.1996 as amended and also claiming that the petitioner fulfilled all the conditions prescribed thereunder and he had to be provided the benefits of regularization alongwith all consequential benefits as awarded in his favour, by computing his entitlement for regularization. Reference was also made to the judgment of the Hon'ble Supreme Court in the matter of ***Hari Nandan Prasad and another Versus Employer I/R to Management of F.C.I. and another***, wherein it was observed as under:

“However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua the constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating the constitutional provision.”

The respondent-Department, however, still rejected the legitimate claim of the petitioner whereupon CWP-29399 of 2018 was instituted by the petitioner for seeking regularization of his services in accordance with the Regularization Policy of 1996 (supra). The said petition was disposed of by this Court with a direction to the respondent-Department to consider the case of the petitioner and pass appropriate order for regularizing the services of the

petitioner in view of the directions issued by this Court in ***Balwinder Singh and Others Versus State of Haryana and Others***, within a period of three months from the date of receipt of certified copy of the said order. The decision was, however, not taken, thus compelling the petitioner to file COCP No.1788 of 2019. During the pendency of the said contempt petition, the respondent-Department passed the impugned order rejecting the claim of the petitioner on 14.08.2019, without any application of mind. The said contempt petition was accordingly disposed of as having been rendered infructuous with liberty to the petitioner to avail alternative remedies in accordance with law against the said order. The same has thus compelled the petitioner to approach this Court.

Learned counsel for the petitioner contends that the case of the petitioner finds support from judgment of this Court in ***CWP-23241 of 2024*** titled as ***Smt. Chameli Versus State of Haryana and others***, as his case is on the same footing. He further contends that the respondent-Department has not disputed the specific pleadings of the petitioner that his juniors have been regularized by the respondent-Department and response filed thereof is that “the same is matter of record.” He contends that in the absence of pointing out any ineligibility or disqualification qua the petitioner, the benefit of Regularization Policy of 1996, w.e.f. the date when his juniors have been regularized had to be extended to the petitioner giving benefit of the Award passed in his favour by the Labour Court on 09.12.2011 awarding continuity of service is required to be taken into consideration. The respondents-Department have chosen to exclude the said period for determining as to whether the petitioner fulfilled the eligibility criteria for regularization under the Policy of 1996. He contends that the said action of the respondents is a clear over-reach to deny a specific relief

already granted to the petitioner vide Award dated 09.12.2011 passed by the Industrial Tribunal-cum-Labour Court, Rohtak giving continuity of service alongwith 50 % of back wages, which such order has already been upheld in the writ petition.

Learned State Counsel contends that the claim of the petitioner deserves to be dismissed and the same has been rightly declined by the respondent-Department vide speaking order 14.08.2019. He contends that the petitioner was entitled for regularization of his services in view of the directions issued by this Court in ***Balwinder Singh's case (supra)*** only if the petitioner fulfills all other conditions prescribed in the Regularization Policy of 1996. Pursuant to the order passed by this Court, all the aspects were considered in light of the Govt. Instructions and it was noticed that the petitioner had filed a reference before the Labour Court, Rohtak, wherein the petitioner was ordered to be reinstated to his previous post with continuity of service alongwith 50% back wages. The petitioner was reinstated on 01.10.2015 with continuity of service w.e.f. 12.07.2004. Hence, the petitioner worked with the respondent-Department w.e.f. August 1991 to December 1991 and January 1992 to July 1992 and did not complete three years of service on 31.01.1996 and did not work for 240 days in a year, hence, he did not fulfill the eligibility criteria as per the Regularization Policy dated 07.03.1996 as modified on 18.03.1996. It was further submitted that there is no illegality in the order passed by the respondent-Department and that no parity can be claimed by the petitioner with the other employees, who may otherwise be junior to the petitioner but fulfill the terms and conditions and eligibility criteria prescribed in the Regularization Policy of 1996.

No other argument has been advanced by any of the parties nor any judgment cited.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The undisputed facts which emerge from the present petition is that the petitioner had worked with the respondent-Department since August 1991 to July 1992. The services of the petitioner were undisputedly terminated, against which a demand notice was sent by the petitioner on 12.07.2004. The Award was initially passed by the Industrial Tribunal-cum-Labour Court, Rohtak on 09.12.2011 and after dismissal of the respondent-Department's writ petition preferred against the said Award, the petitioner was reinstated in service on 01.10.2015 with continuity of service w.e.f. 12.07.2004 alongwith 50% back wages.

I find that the aforesaid interpretation applied by the respondent-Department about continuity of service to be counted from the date of demand notice i.e. 12.07.2004 is misconceived. The operative part of the Award dated 09.12.2011 passed by the Industrial Tribunal-cum-Labour Court is extracted as under:

"15. Thus as a consequence to the aforesaid discussion, this Court is of the considered opinion that as the services of the workman have been terminated in violation of Section 25-F of the Act, so he is entitled for re-instatement alongwith continuity of service and 50% back wages from the date of demand notice i.e. 12.07.2004 and findings under the aforesaid issue are accordingly returned in favour of the workman and against the respondent/management."

A meaningful reading of the aforesaid Award shows that the petitioner has been held entitled to reinstatement alongwith continuity of service and 50% back wages from the date of demand notice i.e. 12.07.2004.

The said relief has not been properly interpreted by the respondent-Department. They have interpreted that the continuity of service as well as 50% back wages have to be extended w.e.f. 12.07.2004, which is clearly based upon misinterpretation of the Award. The relief granted to the workman/petitioner was of reinstatement with continuity in service and only the relief of back wages, to the extent of 50%, was ordered to be released in favour of the petitioner w.e.f. the date of demand notice dated i.e. 12.07.2004. In the event the contention of the respondent-Department is accepted for the sake of arguments and the reinstatement is to be determined w.e.f. 12.07.2004, the very idea of granting relief of continuity of service becomes invalid and the entire service w.e.f. the date of illegal retrenchment gets defeated.

Additionally, the respondent-Department have also not disputed that similarly placed person who are junior to the petitioner have already been granted the benefit and such benefit has also been extended to one Smt. Chameli Devi. No basis for distinguishing the case of the petitioner against the said persons has been validly carved out. I fail to find as to how the interpretation adopted by the respondent-Department would be tenable in law and am of the view that the same is clearly a misinterpretation of an Award passed by the Industrial Tribunal-cum-Labour Court

Under the given circumstances, the present writ petition is allowed.

The respondent-Department is directed to extend the benefit of regularization of

service to the petitioner w.e.f. the date when his immediate junior was regularized in service.

Let the needful be done by the respondent-Department within a period of three months of the receipt of certified copy of this order. All other consequential benefits shall also be computed by the respondent-Department within a further period of three months and the same shall also be released to the petitioner within a period of two months thereafter.

Needless to mention that in case the benefits are not computed and released within total period of five months after the regularization of service within a period of three months as directed above, the petitioner shall be entitled to claim interest at the rate of 6% on the benefits so computed, which such additional financial liability may be recovered from the person who caused delay.

Petition stands allowed accordingly.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

JANUARY 21, 2025.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No